

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0311, In the Matter of Narotam S. Grewal and Gail E. Garrison, the court on September 14, 2006, issued the following order:**

The respondent, Gail Garrison, appeals and the petitioner, Narotam Grewal, cross-appeals the final decree in their divorce. We affirm.

“We afford trial courts broad discretion in determining matters of property distribution, alimony and child support in fashioning a final divorce decree. We will not overturn the trial court’s decision absent an unsustainable exercise of discretion.” In the Matter of Crowe & Crowe, 148 N.H. 218, 221 (2002) (citation omitted).

### I. Respondent’s Appeal

The respondent first argues that the trial court erred when it ruled that the parties’ prenuptial agreement was valid and enforceable. The parties’ prenuptial agreement entitles the respondent to receive her separate property and either \$100,000 plus \$25,000 for every three years of the marriage, or one-half of any property put in joint names, whichever is greater. The agreement permits the petitioner to retain his separate property, which includes his worth from the sale of his business. As a practical matter, enforcing the agreement leaves the respondent with approximately \$500,000 in real estate value and the petitioner with more than \$50 million.

Under New Hampshire law, a prenuptial agreement is valid unless the party seeking to invalidate it proves that: (1) the agreement was obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of a material fact; (2) the agreement is unconscionable; or (3) the facts and circumstances have so changed since the agreement was executed as to make the agreement unenforceable. In the Matter of Yannalfo & Yannalfo, 147 N.H. 597, 599 (2002). Based upon our review of the record, we conclude that the trial court sustainably exercised its discretion when it found that the respondent failed to meet this burden of proof.

Specifically, we sustain the trial court’s findings that the respondent did not sign the agreement under duress and that the agreement was not unconscionable when it was executed. See id. As the trial court found, and as the record supports, the respondent had full disclosure of the petitioner’s assets, including the value of his business, and full knowledge of his hopes to sell that business for \$100 million. That she may not have believed that the petitioner’s

wealth would at one point exceed \$250 million is immaterial.

The evidence also demonstrates that the respondent signed the agreement against the advice of the two attorneys she hired to review it. The evidence further reflects that, as the trial court found, the parties negotiated the agreement over a relatively substantial period of time. Under these circumstances, we cannot conclude that the trial court erred when it declined to find either that the agreement was unconscionable or that the respondent signed it under duress.

We further conclude that the trial court sustainably exercised its discretion when it found that, although there were changed circumstances, these circumstances should have been foreseeable to the respondent and were not so far beyond her contemplation at the time of the contract as to constitute an unconscionable hardship.

The respondent next asserts that the trial court erred because its child support order deviated from the child support guidelines. We conclude that the trial court did not err in this respect as there is evidence in the record to support the trial court's determination that such a deviation was warranted because of the petitioner's significantly high income.

Finally, the respondent contends that the trial court erred when it declined her request to preclude the petitioner from flying with the parties' children in his private jet. As there is evidence in the record to support this decision, we uphold it.

## II. Petitioner's Cross-Appeal

The petitioner first argues that the trial court's child support award of \$9,000 per month is excessive. We conclude that the trial court sustainably exercised its discretion when it found otherwise. See RSA 458-C:1 (Supp. 2005) (purposes of child support include minimizing the economic consequences of divorce upon children and recognizing that the children of the obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families).

The petitioner next asserts that the trial court erred when it found that adultery caused the irremediable breakdown of the marriage. As there is evidence in the record to support this finding, we conclude that the trial court did not err in this respect.

The petitioner next contends that the trial court erroneously required him to pay the real estate taxes and home insurance on the Rye property, without ordering the respondent to pay all other expenses associated with the property. We uphold the trial court's determination as a sustainable exercise of discretion. We similarly uphold the trial court's decisions to: require the petitioner to maintain a life insurance policy in the amount of \$1 million, naming the

respondent as the sole beneficiary until the petitioner no longer has child support obligations; equally split the \$64,450 tax refund between the parties; and decline to award the petitioner the items he seeks from the marital residence.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**